

TITLE FOUR - Taxation

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CHAPTER 840

Business, Professional and Occupational License Tax

EDITOR'S NOTE: Chapter 840 was re-enacted in its entirety by Ordinance 96-08, passed October 16, 1996.

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CROSS REFERENCES

Authority to impose - see Code of Va. § 58.1-3703 et seq.
 Commissioner of the Revenue - see ADM. Ch. 222
 Treasurer - see ADM. Ch. 224
 Payment of taxes by credit card - see ADM. 224.01
 Exemptions from penalty and interest - see B.R. & T. 864.01
 Erroneously assessed levies - see B.R. & T. 864.02

840.01 DEFINITIONS.

As used in this chapter:

(a) "Affiliated group" means:

- (1) One or more chains of corporations subject to inclusion, connected through stock ownership with a common parent corporation, which is a corporation subject to inclusion if:
 - A. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and
 - B. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other corporations subject to inclusion.

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group, irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

- (2) Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:
 - A. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and
 - B. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent that such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock," as used in this paragraph, shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

- (b) "Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied and, ultimately, the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by the assessing official when a written notice of assessment is delivered to the taxpayer by

the Commissioner of the Revenue or an employee of the Commissioner of the Revenue or mailed to the taxpayer at his or her last known address. Self-assessments shall be deemed made when a return is filed. A return filed or tax paid before the last day prescribed by this chapter for filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of the tax, as the case may be.

- (c) "Assessor" or "assessing official" means the Loudoun County Commissioner of the Revenue.
- (d) "Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of Section 58.1-3715 of the Code of Virginia, as amended.
- (e) "Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business:
 - (1) Advertising or otherwise holding oneself out to the public as being engaged in a particular business; or
 - (2) Filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.
- (f) "Definite place of business" means an office or a location at which a regular and continuous course of dealing occurs over a period of thirty consecutive days or more. A definite place of business for a person engaged in business may include, by way of illustration and not limitation, a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A residence of a person engaged in business shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable under this chapter as a peddler or itinerant merchant.
- (g) "Financial service" means the buying, selling, handling, managing, investing and providing of advice regarding money, credit, securities or other investments.
- (h) "Gross receipts" means the whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Chapter 37, Title 58.1, of the Code of Virginia, as amended.
- (i) "Itinerant vendor" means any person who does or transacts any temporary or transient Merchant Business in the County and who, for the purpose of carrying on such business occupies any location for a period of less than one year. This term shall not include persons who sell meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies or farm products of a perishable nature grown or produced by them, and not purchased by them for re-sale.
- (j) "License year" means the calendar year for which a license is issued for the privilege of engaging in business.
- (k) The term "Merchant business" includes the offering for sale or barter, and/or the actual sale or barter of, any goods, wares, services, merchandise or products of any description, including food and beverages.

- (l) "Peddler" means any person who carries from place to place any goods, wares, merchandise or products of any description, including food and beverages, and offers to sell or barter the same, or actually sells or barter the same. This term shall not include persons who sell meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies or farm products of a perishable nature grown or produced by them, and not purchased by them for re-sale.
- (m) "Person" means any individual, firm, co-partnership, corporation, company, association or joint stock corporation, and shall include any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, profession, trade or occupation, but shall not include a trustee, receiver or other representative duly appointed by a court to liquidate assets for immediate distribution, or a sheriff or any deputy selling under the authority of process or writ of a court of justice, nor shall it include any organization that has qualified for exemption under 26 USC 501(c)(6), to the extent that the receipts of such organization, which by reason of the organization's purposes or activities, are exempt from United States income tax.
- (n) "Professional service" means services provided by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, practitioners of the healing arts (the art and science dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such other occupations as the Department of Taxation may list in the BPOL Guidelines, or promulgated pursuant to Section 58.1-3701 of the Code of Virginia, as amended. The Department shall identify and list each occupation or vocation in which a professed knowledge of some Department of learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, whether advising, guiding or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainment in professional knowledge, as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.
- (o) "Purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of the manufactured goods, wares or merchandise if he or she cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.
- (p) "Real estate service" means rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this chapter.
- (q) "Special Event" means a temporary commercial, cultural, sporting or festive activity, event or promotion conducted in the County at a specific location that is planned or reasonably expected to attract large assemblies of persons and at which the provision of

space for temporary business, exhibit or sales transactions has been established. "Special Events" include, but are not limited to, carnivals, festivals, circuses, music fairs or concerts, art shows, craft shows, rodeos, civil war re-enactments, equestrian shows and events, animal shows, antique shows and sales.

- (r) "Special Event Itinerant Vendor" or "Special Event Vendor" means an Itinerant Vendor who, in person or by employees or agents, conducts or transacts temporary Merchant Business in the County at a Special Event; and for the purpose of conducting such business occupies a space designated by the Special Event Organizer. This term shall not include persons who sell meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies or farm products of a perishable nature grown or produced by them, and not purchased by them for re-sale.
- (s) "Special Event Organizer" means any person or entity who organizes or manages a Special Event in the County, or who leases, assigns or designates space at a Special Event to Special Event Itinerant Vendors for the purpose of conducting or transacting temporary Merchant Business during the Special Event. The term "Special Event Organizer" implies substantial and major active participation in the operation and control of the Special Event. The sponsoring of a Special Event, coupled with selling tickets, assisting with publicity, sharing in revenues generated, and ownership of the property on which the Special Event is located, shall not— without more— constitute "organizing or managing" a Special Event.
- (t) "Special Event Sponsor" means any person or entity that allows its name to be used in connection with promoting a Special Event and that may share in the revenue from such Special Event.

(Ord. 96-08. Passed 10-16-96; Ord. 04-13. Passed 10-12-04.)

840.02 APPLICATION OF CHAPTER; INTERPRETATION.

(a) Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by the Board of Supervisors, whether or not compiled in these Codified Ordinances, to the extent of any conflict, the following provisions, effective January 1, 1997, shall be applicable to the levy, assessment and collection of taxes imposed on, and to licenses required of, businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within this locality.

(b) The requirements of this chapter shall be in addition to those regulating the issuance of permits to conduct specialized occupations in the County or licenses which may be required by the County or State.

(Ord. 96-08. Passed 10-16-96.)

840.03 LICENSING GENERALLY.

(a) License Required. Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if:

- (1) The person has a definite place of business in this jurisdiction;
- (2) There is no definite place of business anywhere and the person resides in the County; or
- (3) There is no definite place of business in the County, but the person operates amusement machines in the County or is classified as an itinerant merchant, peddler or carnival or circus contractor pursuant to Section 58.1-3717 of the Code of Virginia, as amended, or a public service corporation. (Ord. 96-08. Passed 10-16-96.)
- (4) The person is a contractor conducting business in the County for less than thirty days without a definite place of business in the Commonwealth of Virginia and where the amount of business done by such person in the County exceeds or will exceed the sum of twenty-five thousand dollars (\$25,000) for the license year. (Ord. 99-16. Passed 12-1-99.)

(b) Separate Licenses for Each Place of Business. A separate license shall be required for each definite place of business and for each business, except that a person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

- (1) Each business or profession is licensable at the location and has satisfied any requirements imposed by State law or other provisions of these Codified Ordinances;
- (2) All of the businesses or professions are subject to the same tax rate or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest applicable rate; and
- (3) The taxpayer supplies such information as the Commissioner of the Revenue may require concerning the nature of the businesses and their gross receipts.

(c) Application for License. All affected embraced by this chapter shall make application for licenses to the County Commissioner of the Revenue. The Commissioner shall furnish the necessary forms, which shall be properly filled in with such information as the Commissioner may require. The Commissioner shall compute the amount of license tax and, after payment has been received by the County Treasurer, the license shall be issued. Renewal applications shall be filed with the Commissioner.

(d) Required Information; Failure to Provide Information. Every applicant for a license to conduct any business, profession, trade or occupation under the provisions of this chapter shall furnish the Commissioner of the Revenue, in writing, with the correct name and trade name, if any, of the applicant, the correct physical residence of the applicant, the nature of the business, profession, trade or occupation to be pursued, the place where it is to be pursued, and a record of gross receipts,

verified by oath, for the past year, as well as such information as may be required by law. In the event of a failure or refusal to file with the assessing official the information necessary to enable him or her to assess a license tax on the basis provided by law, such assessing official shall assess such license tax upon the best information obtainable, adding thereto the penalty prescribed by law.

(e) License for Persons Beginning Business, Etc. Every person beginning a business, profession, trade or occupation which is subject to a license tax under the provisions of this chapter shall estimate the amount of the gross receipts he or she will receive between the date of beginning such business and the end of the then current calendar year.

(f) Licensing Basis. As to businesses, professions, trades or occupations for which a gross receipts license tax is levied on persons having a definite place of business in the County, all gross receipts derived from the business, profession, trade or occupation shall be included in their licensing basis, provided that in cases where their business, profession, trade or occupation requires the performance of certain activities outside of the County and they would be liable for a similar tax in the other taxing jurisdiction based on gross receipts derived from activities conducted within the other taxing jurisdiction, they shall be permitted to deduct such gross receipts taxed or taxable by the other taxing jurisdiction in arriving at their licensing basis. In all cases, such amount deducted must be first included in their total gross receipts.
(Ord. 96-08. Passed 10-16-96.)

840.035 LICENSING FOR SPECIAL EVENTS.

A Special Event Organizer shall:

- (a) File with the Commissioner of the Revenue at least fourteen days prior to the proposed start of each Special Event a list of all Special Event Itinerant Vendors to whom a space, booth or other area has been leased or assigned for the purpose of operating a temporary business or sales activity during the Special Event.
- (b) Advise each Special Event Itinerant Vendor of their responsibility for collecting Virginia sales and use taxes on all transactions, and that sales tax forms may be obtained from the Commissioner of the Revenue's Office.
(Ord. 04-13. Passed 10-12-04.)

840.04 PAYMENT OF TAX; PENALTY FOR FAILURE TO FILE AND PAY WHEN DUE.

(a) Due Dates. Each person subject to a license tax shall apply for and pay a license tax no later than thirty days after commencing operations in the County if he or she was not subject to licensure in the County on or before January 1 of the license year. All license tax declarations for renewal accounts must be filed no later than January 31 of the license year. All license taxes imposed by this chapter, except as herein otherwise provided, shall become due and payable on or before April 15 of each license tax year. Beginning January 1, 1998, and each year thereafter, all license declarations and taxes shall become due and payable on or before March 1 of each license year. The declaration shall be on forms prescribed by the assessing official.

The tax shall be paid with the declaration in the case of any license tax not based on gross receipts. If the tax is measured by the gross receipts of the business and is a renewal account, the tax shall be paid no later than April 15. Beginning January 1, 1998, and each year thereafter, all taxes shall become due and payable on or before March 1 of each license year.

(b) Payment of License Tax by Corporations, Etc. When the business, profession, trade or occupation licensed is conducted by a corporation, partnership, limited liability company or limited liability partnership and the license tax is imposed upon the gross receipts thereof, the license tax shall be imposed upon the gross receipts of the corporation, partnership, limited liability company or limited liability partnership and paid by it. When so paid, and also when paid by an individual employing persons who would otherwise be liable for a license tax, payment of the license tax shall be deemed to discharge the license tax liability of the officers and employees of such corporation and partners, and employees of such limited liability company, and employees of such limited liability partnership, and employees of such partnership, and employees of such persons employed by an employer who would otherwise be liable to such license tax, insofar as the business of such licensed corporation, partnership, limited liability company, limited liability partnership or employer is concerned.

(c) Penalty for Failure to File and Pay When Due. A penalty of ten percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late. However, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of assessment of additional tax made by the assessing official, if the application and, if applicable, the return was made in good faith and the understatement of the tax was not due to fraud or reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of the tax by the assessing official is not paid within thirty days, the Treasurer or other collecting official may impose a ten percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed or, if imposed, shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he or she acted responsibly and the failure was due to events beyond his or her control.

As used in this subsection:

- (1) "Acted responsibly" means that:
 - A. The taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations of the business; and
 - B. The taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment once it occurred and promptly rectifying a failure once the impediment was removed or the failure discovered.

- (2) "Events beyond a taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g. due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reliance in good faith upon erroneous written information from the assessing official who was aware of the relevant facts relating to the taxpayer's business when he or she provided the erroneous information.

(d) Interest. Interest at the rate of 10 percent per year shall be charged on the late payment of the tax computed monthly from the first day following the date such payment is due until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, whether attributable to an amended return or other reason, the tax, penalty and all interest charged and collected on the amount of the assessment found to be erroneous, shall be refunded, together with interest on the refund computed as provided in Section 864.02(d), except as otherwise provided herein.

No interest shall accrue on an adjustment of estimated tax liability at the conclusion of a base year. No interest shall be paid on a refund issued within thirty days from the date of the payment that created the refund.

(Ord. 96-08. Passed 10-16-96; Ord. 04-07. Passed 4-20-04; Ord. 04-10. Passed 6-8-04.)

840.05 SITUS OF GROSS RECEIPTS.

(a) General Rule. Whenever the tax imposed by this chapter is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a privilege, subject to licensure at a definite place of business within this jurisdiction, for the preceding calendar year. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed or controlled. The situs of gross receipts for different classifications shall be attributed to one or more definite places of business or offices as follows:

- (1) The gross receipts of a contractor shall be attributed to the definite place of business at which his or her services are performed, or, if his or her services are not performed at any definite place of business, then the definite place of business from which his or her services are directed or controlled, unless the contractor is subject to the provisions of Section 58.1-3715 of the Code of Virginia, as amended;
- (2) The gross receipts of any contractor who conducts business in the County for less than thirty days without a definite place of business in the Commonwealth of Virginia, where the amount of business done by such person in the County exceeds or will exceed the sum of twenty-five thousand dollars (\$25,000) for the license year, shall be attributable to the place within the County where the contractor's services are performed;

- (3) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or, if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled. However, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is

subject to a license tax in two or more localities and who is subject to multiple taxation because the localities use different measurers, may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.

(4) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented, or, if the property is not rented from any definite place of business, then to the definite place of business at which the rental of such property is managed; and

(5) The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed, or, if not performed at any definite place of business, from which the services are directed or controlled.

(b) Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts of the business shall be apportioned between the definite places of business on the basis of payroll, gross receipts shall not be apportioned to a definite place of business, unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

(c) Apportionment Agreements. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among the definite places of business. However, the sum of gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more of the political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the assessor or the taxpayer may seek an advisory opinion from the Department of Taxation pursuant to Section 58.1-3701 of the Code of Virginia, as amended. Notice of the request shall be given to the other party. Notwithstanding the provisions of Section 58.1-3993 of the Code of Virginia, as amended, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of Section 58.1-3986 of the Code of Virginia, as amended, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure the taxpayer is not required to pay multiple assessments, even though it is not then known which assessment is correct and which is erroneous.

(Ord. 96-08. Passed 10-16-96; Ord. 99-16. Passed 12-1-99.)

840.06 EXTENSIONS; LIMITATIONS.

(a) The assessing official may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon timely payment of a reasonable estimate of the appropriate tax. The tax is then subject to adjustment to the correct tax at the end of the extension, together with interest, from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of ten percent of the portion paid after the due date.

(b) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this chapter, both the assessing official and the taxpayer have consented, in writing, to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Notwithstanding Section 58.1-3903 of the Code of Virginia, as amended, which pertains to omitted local taxes and levies, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.

(d) The period for collecting any local license tax shall not expire prior to the period specified in Section 58.1-3940 of the Code of Virginia, as amended, two years after the date of assessment if the period for assessment has been extended pursuant to this subsection, two years after the final determination of an appeal for which collection has been stayed pursuant to Section 840.07 or two years after final determination in a court application pursuant to Section 58.1-3984 of the Code of Virginia, as amended, or a similar law for which collection has been stayed, whichever is later. (Ord. 96-08. Passed 10-16-96.)

840.07 APPEALS.

(a) Any person assessed with a local license tax as a result of an audit may apply, within ninety days from the date of such assessment, to the assessor for a correction of such assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer, if requested by the taxpayer, or require submission of additional information and documents, a further audit or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth his or her position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed. All requests for correction of assessments must be addressed to the Commissioner of the Revenue, P.O. Box 7000, Leesburg, VA 20177-7000.

(b) Provided a timely and complete application is made, collection activity shall be suspended until a final determination is issued by the assessor, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of interest as referenced in Section 58.1-3916 of the Code of Virginia, as amended, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous or that a taxpayer desires to:

- (1) Depart quickly from the locality;
- (2) Remove his or her property therefrom;
- (3) Conceal himself or herself or his or her property therein; or
- (4) Do any other act tending to prejudice, or to render wholly or partially ineffectual, a proceeding to collect the tax for the period in question.

(c) Any person assessed with a local license tax as a result of an audit may apply, within ninety days of determination by the assessing official, on an application as set forth in subsection (a) hereof, to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The application shall be treated as an application pursuant to Section 58.1-1821 of the Code of Virginia, as amended, and the Tax Commissioner may issue an order correcting such assessment pursuant to Section 58.1-1822 of such Code. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to Section 58.1-3984 of the Code of Virginia, as amended. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

(d) Upon receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection (c) hereof, the assessing official shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of Section 58.1-3916 of the Code of Virginia, as amended, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as in subsection (b) hereof.

(Ord. 96-08. Passed 10-16-96.)

840.08 LOCAL TAX RULINGS.

Any taxpayer may request a written ruling from the assessor regarding the application of a local license tax to a specific situation. Any person requesting such a ruling must provide all of the relevant facts of the situation and present a rationale for the basis for an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if there is a change in the law, a court decision or the guidelines issued by the Department of Taxation upon which the ruling was based, or if the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.
(Ord. 96-08. Passed 10-16-96.)

840.09 RECORDS; AUDITS.

Every person who is assessable with a local license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of the tax that was assessable for each of those years. All such records, books of accounts and other information shall be open for inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the licensed privilege exercised within this jurisdiction. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office on demand.

840.10 PROHIBITED TAX BASIS.

No license tax shall be imposed based upon gross receipts on a business, profession, trade, occupation or calling or upon any person, firm or corporation, for any fraction of a year during which such person, firm or corporation has permanently ceased to engage in such business, profession, trade, occupation or calling within the County. In the event a person, firm or corporation ceases to engage in a business, profession, trade, occupation or calling within the County during a year for which a license tax based on gross receipts has already been paid, the taxpayer shall be entitled, upon application, to a refund for that portion of the license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the County. The County may elect to remit any refunds in the ensuing fiscal year and may offset against such refund any amount of past-due taxes owed by the same taxpayer. In no event shall the County be required to refund any part of a flat fee or minimum flat tax.

(Ord. 96-08. Passed 10-16-96.)

840.11 EXCLUSIONS; DEDUCTIONS.

(a) Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business, profession, trade or occupation in the ordinary course of business.

The following items shall be excluded from gross receipts:

(1) Amounts received and paid to the United States, the Commonwealth of Virginia or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, or for any Federal or State excise tax on motor fuels.

(2) Any amounts representing the liquidation of a debt or conversion of another asset, to the extent that the amount is attributable to a transaction previously taxed (e.g. the factoring of accounts receivable created by sales which have been included in taxable receipts, even though the creation of such debt and the factoring are a regular part of its business).

(3) Any amount representing returns and allowances granted by the business to its customers.

(4) Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.

(5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.

(6) Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, which the recipient assigns to the licensee for consideration of the sale of goods and services, shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts, together with any handling or any other fees related to the incentive.

(7) Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received, and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for Federal income tax purposes.

(8) Investment income not directly related to the privilege exercised by a business subject to licensure not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensable privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

(9) Gross receipts from the design, development or other creation of computer software for lease, sale or license.

(10) Gross receipts from charitable non-profit organizations which qualify for exemption as a Section 501(c)(3) organization and to which contributions are deductible under Internal Revenue Code §170, except to the extent that they have receipts from unrelated business income.

(11) Gross receipts from gifts, contributions and membership dues of a non-profit organization, defined as an organization, other than a charitable non-profit organization, which is exempt from Federal income tax under Internal Revenue Code §501. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure.

(12) Gross receipts of real estate brokers for license tax purposes under Chapter 37, Title 58.1 (§58.1 3700 et seq.), of the Code of Virginia, as amended, shall not include amounts received by any broker which arise from real estate sales transactions, to the extent that such amounts are paid to a real estate agent as a commission on any real estate sales transaction and the agent is subject to the business license tax on such receipts. The broker claiming the exclusion shall identify on its license application each agent to whom the excluded receipts have been paid and the jurisdiction in the Commonwealth of Virginia to which the agent is subject to business license taxes.

(b) The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:

(1) Any amount paid for computer hardware and software that are sold to a United States Federal or state government entity, provided that such property was purchased within two years of the sale to said entity by the original purchaser, who shall have been contractually obligated at the time of purchase to resell such property to a state or Federal government entity. This deduction shall not occur until the time of resale and shall apply only to the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or Federal government entity in accordance with the original contract obligation.

(2) Any receipts attributable to business conducted in another state or a foreign country in which the taxpayer is liable for an income or other tax based upon income.

(Ord. 96-08. Passed 10-16-96.)

840.12 COMPLIANCE REQUIRED.

It shall be unlawful and shall constitute a Class 1 misdemeanor for any person to engage in a business, employment or profession without procuring a license, as required by this chapter. Any person who engages in a business without obtaining a required local license, or after being refused a license, shall not be relieved of the tax imposed by this chapter. (Ord. 96-08. Passed 10-16-96.)

840.13 DECLARATION REQUIRED; EXEMPTIONS; FEE.

(a) Filing of Declaration. Every person engaged in a business, profession, trade or occupation must file a declaration of gross receipts with the Commissioner of the Revenue annually, regardless of an exemption from the payment of a license tax or fee.

(b) Exemption From Payment of Tax.

- (1) All new businesses locating to the County, except for businesses classified under Section 840.14(e), shall be exempt from the payment of a license tax during the first calendar year they are engaged in that business.
- (2) All home-based businesses with gross receipts of less than four thousand dollars and one cent (\$4,000.01) shall be exempt from the payment of a license tax.
- (3) All persons engaged in a business, profession, trade or occupation subject to licensure, whose gross receipts are less than two hundred thousand dollars (\$200,000), shall be exempt from the payment of a license tax.

(c) Fee. Every person engaged in a business, profession, trade or occupation subject to licensure under this chapter shall be assessed and required to pay annually a fee in the amount of thirty dollars (\$30.00) for the issuance of such license.

- (1) All home-based businesses with gross receipts of less than four thousand and one cent (\$4,000.01) shall be exempt from the payment of the fee for issuance of the license.
- (2) All persons engaged in a business, profession, trade or occupation subject to licensure, whose gross receipts are more than two hundred thousand dollars (\$200,000), shall be exempt from the payment of the fee for issuance of the license.
- (3) Itinerant Vendors or Peddlers. In lieu of the license fee assessed in division (c) of this section, and notwithstanding the limitations of division (c)(2) of this section, all Itinerant Vendors and Peddlers, except as provided in division (c)(4) of this section, shall pay to the County a specific license fee of five hundred dollars (\$500.00) per year. The license shall be a personal privilege and shall not be transferrable, nor shall there be any abatement of the fee upon such license by reason of the fact that the person so licensed has exercised such license for any period of time less than that for which it was granted. The license issued shall, at all times, be prominently displayed, viewable by the public, at the location where the licensee is conducting business.
- (4) Special Event Itinerant Vendor. Any special event itinerant vendor engaged in a special event for a period not to exceed seven calendar days, shall not be required to obtain a license and shall not be assessed a fee thereof.

FEES PAYABLE ACCORDING TO GROSS RECEIPTS

<u>Gross Receipts or Purchases (At Least)</u>	<u>Gross Receipts or Purchases Not More Than</u>	<u>License Fee Payable</u>
\$ 0	\$4,000.00	\$ 0
\$ 4,000.01	\$200,000.00	\$ 30.00
\$200,000.01		\$ 0

(Ord. 99-12. Passed 7-12-99; Ord. 02-13. Passed 9-16-02; Ord. 04-13. Passed 10-12-04.)

840.14 CALCULATION OF TAX.

In addition to the fee specified in Section 840.13(c), any person engaged in a business, profession, trade or occupation with gross receipts of more than two hundred thousand dollars (\$200,000) shall be assessed and required to pay annually a license tax on gross receipts or a flat tax at the rate established for the particular enterprise as set forth below:

- (a) Amusements. Every person conducting or engaging in any amusement occupation, business or trade, defined as any entertainment show, event or sport for which a price or fee is charged for admission or participation, shall pay for the privilege an annual license tax of twenty-one cents (\$0.21) per one hundred dollars (\$100.00) of gross receipts.
- (b) Bondsmen. Any person who, for compensation, enters into any bond or bonds for others, whether as a principal or surety, except a bondsmen licensed by a city or county of the Commonwealth under Section 58.1-3724 of the Code of Virginia, as amended, shall pay a license tax of fifty dollars (\$50.00). Such tax shall not be prorated. No such license shall be issued by the County Commissioner of the Revenue until the applicant has first obtained a certificate from the Judge of the Circuit Court that he or she is a person of good moral character and entitled to be so licensed.
- (c) Business Services. Every person conducting or engaging in any business service occupation, defined as the performance of work or some other activity, for a commercial enterprise by one business, trade or occupation on behalf of another business or commercial enterprise, shall pay for the privilege an annual license tax of seventeen cents (\$0.17) per one hundred dollars (\$100.00) of gross receipts, except for the following:
 - (1) Every person who leases or rents aircraft shall pay for the privilege an annual license tax of five cents (\$0.05) per one hundred dollars (\$100.00) of gross receipts.
 - (2) Every person who engages in the business of providing a computer information on-line service shall pay for the privilege an annual license tax of fifteen cents (\$0.15) per one hundred dollars (\$100.00) of gross receipts.
 - (3) Every person who engages in the business of providing global satellite-based imaging services or global satellite-based mobile data and messaging communications systems services shall pay for the privilege an annual license tax of fifteen cents (\$0.15) per one hundred dollars (\$100.00) of gross receipts.

- (4) Any person, firm or corporation designated as the principal or prime contractor receiving identifiable Federal appropriations for research and development services, as defined in Section 31.205-18 of the Federal Acquisition Regulation, in the areas of computer and electronic systems, computer software, applied sciences, economic and social sciences, and electronic and physical sciences, shall be subject to a license tax rate of three cents (\$0.03) per one hundred dollars (\$100.00) of such Federal funds received in payment of such contracts, upon documentation provided by such person, firm or corporation to the Commissioner of the Revenue confirming the applicability of this paragraph.
- (d) Coin-Operated Machines.
- (1) Tax. Every person selling, leasing, renting or otherwise furnishing or providing ten or more coin-operated machines or devices operated on the coin-in-the-slot principle shall pay for the privilege an annual license tax of the following:
- A. Less than ten machines: \$150.00
 - B. Ten or more machines: \$200.00
- (2) Situs. The annual license tax imposed hereby may be imposed whenever any such coin-operated machine or device operated on the coin-in-the-slot principle is located within the County.
- (3) Exemptions. The following persons shall not be assessed with the license tax imposed by this subsection:
- A. Any person owning fewer than three such coin-operated machines and operating such machines on property owned or leased by such person;
 - B. Any operator of weighing machines, automatic baggage or parcel checking machines or receptacles;
 - C. Any operator of vending machines so constructed as to do nothing but vend goods, wares or merchandise or postage stamps, or provide service only; and
 - D. Any operator of viewing machines or photomat machines and any operator of devices or machines affording rides to children or for the delivery of newspapers.
- Every operator of such machines or devices shall furnish to the Office of the Commissioner of the Revenue imposing such license tax a complete list of all machines or devices, located by address of each location.
- (e) Contractors and Contracting. Every person conducting and engaging in any contracting business, profession, trade or occupation, as defined in Section 58.1-3714D of the Code of Virginia, as amended, including those contractors described in Section 58.1-3715B of the Code of Virginia, whether such work is done or offered to be done by day labor, general contract or subcontract, and any person constructing any property or structure for his or her own account, for sale, including, but not limited to, speculative builders, shall pay for the privilege an annual license tax of thirteen cents (\$0.13) per one hundred dollars (\$100.00) of gross receipts.

- (f) Fortunetellers and Related Occupations. Any person who, for compensation, shall pretend to tell fortunes, assume to act as a clairvoyant, or practice palmistry or phrenology, shall be deemed a fortuneteller and shall pay an annual license tax of five hundred dollars (\$500.00). Such tax shall not be prorated nor shall any license be assignable.
- (g) Hotels and Motels. Every person operating a hotel or motel, renting in excess of seven bedrooms to transients or sojourners, shall pay for the privilege an annual license tax of twenty-three cents (\$0.23) per one hundred dollars (\$100.00) of gross receipts.

The words "hotel" and "motel" are defined to mean any building or group of buildings containing guest rooms and/or dwelling units, or a bed and breakfast establishment, offering lodging to four or more persons at any one time, which are intended, used or designed to be rented, let or hired out, for compensation, by automobile tourists or other transients, whether such compensation is paid directly or indirectly. This shall include motels, motor hotels, tourist courts, motor lodges, conference centers and the like. Daily or weekly rental of units or any sign on the premises making reference to other than monthly rates shall be considered prima-facie evidence that a building is a hotel and subject to all hotel restrictions and ordinances.

- (h) Money Lenders. Every person who or which operates under the laws regulating money lending occupations shall pay for the privilege an annual license tax of sixteen cents (\$0.16) per one hundred dollars (\$100.00) of gross receipts. The license tax on a savings and loan association shall be fifty dollars (\$50.00).
- (i) Personal Service. Every person conducting or engaging in any personal service business, profession, trade or occupation, defined as the performance of work or some other activity for a fee by a business, profession, trade, occupation or calling on behalf of an individual or some other non-commercial business, shall pay for the privilege an annual license tax of twenty-three cents (\$0.23) per one hundred dollars (\$100.00) of gross receipts. Photographers having no regularly established place of business in this State shall pay an annual license tax of thirty dollars (\$30.00).
- (j) Professional, Financial and Real Estate Services. Every person engaged in any professional, financial or real estate service shall pay for the privilege an annual license tax of thirty-three cents (\$0.33) per one hundred dollars (\$100.00) of gross receipts.
- (k) Public Service Corporations. Every telephone and/or telegraph company, water company and heat, light and/or power company shall pay for the privilege of conducting business in the County an annual license tax of one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in the County. In the case of telephone companies, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation.
- (l) Rental by Owners. This section provides for the rental of a building or portion thereof designed exclusively for residential occupancy, including one-family, two-family and multifamily dwellings, but not including hotels, boarding houses and rooming houses.

The words "dwelling unit" are defined to mean one or more rooms in a dwelling house or apartment designed for occupancy by one family for living purposes and having cooking facilities.

Every person who, as a principal, engages in the business of renting houses, apartments, commercial property or industrial facilities in the County shall pay for the privilege of doing business sixteen cents (\$0.16) for each one hundred dollars (\$100.00) of gross receipts.

A person engaged in the business of renting houses or apartments, or both, shall not be affected by, or come within the provisions of, this section, unless such person is engaged in the business of renting more than two separate dwelling units.

- (m) Repair Businesses. Every person conducting or engaging in any repair business, profession, trade or occupation, defined as the alteration, renovating, or servicing of goods, wares and merchandise, shall pay for the privilege an annual license tax of sixteen cents (\$0.16) per one hundred dollars (\$100.00) of gross receipts.
- (n) Short-Term Rental Businesses. Every person conducting or engaging in a short-term rental business, as defined by Section 58.1-3510.1 of the Code of Virginia, as amended, shall pay for the privilege an annual license tax of twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross rental receipts.
- (o) Retail Merchants. Every person engaged in the business, profession, trade or occupation of selling goods, wares or merchandise, for use or consumption by the purchaser, at retail only and not for resale, shall pay for the privilege an annual license tax of seventeen cents (\$0.17) per one hundred dollars (\$100.00) of gross receipts.
- (p) Wholesale Merchants. Every person conducting or engaging in any wholesale business, profession, trade or occupation, defined as selling wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also including sales to institutional, commercial and industrial users, which, because of the quantity, price or other terms of sales, indicate that they are consistent with sales at wholesale, shall pay for the privilege an annual license tax of five cents (\$0.05) per one hundred dollars (\$100.00) of gross purchases.
- (q) Other Businesses or Professions. All other businesses and professions not specifically listed or excepted in this section shall pay for the privilege an annual license tax of thirty-three cents (33¢) per one hundred dollars (\$100.00) of gross receipts.
(Ord. 96-08. Passed 10-16-96; Ord. 99-01. Passed 1-20-99; Ord. 99-12. Passed 7-21-99; Ord. 99-16. Passed 12-1-99; Ord. 1-10. Passed 9-17-01; Ord. 02-13. Passed 9-16-02; Ord. 02-16. Passed 11-4-02.)

